

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

In Re: IRISH BANK RESOLUTION : BANKRUPTCY CASE  
CORPORATION LIMITED : NO. 13-12159-CSS

-----  
JOHN FLYNN, SR., et al., : CIVIL ACTION  
Plaintiffs, :  
v :  
KIERAN WALLACE, et al., :  
Defendants. : NO. 14-108-LPS

- - -

Wilmington, Delaware  
Monday, April 21, 2014  
*TELEPHONIC ORAL ARGUMENT*

- - -

BEFORE: HONORABLE **LEONARD P. STARK**, U.S.D.C.J.

APPEARANCES: - - -

THE ROSNER LAW GROUP, LLC  
BY: FREDERICK B. ROSNER, ESQ.

and

O'NEILL & COMPANY  
BY: LAWRENCE DANIEL O'NEILL, ESQ.  
(New York, New York)

Counsel for Flynn Parties

SKADDEN ARPS SLATE MEAGHER & FLOM, LLP  
BY: VAN C. DURRER, II, ESQ., and  
ANNIE LI, ESQ.

Counsel for the Foreign Representatives of  
Irish Bank Resolution Corporation Limited

Brian P. Gaffigan  
Registered Merit Reporter

- oOo -

P R O C E E D I N G S

(REPORTER'S NOTE: The following telephonic oral argument was held in chambers, beginning at 4:26 p.m.)

THE COURT: Good afternoon, everyone. This is Judge Stark. Who is there, please?

MR. O'NEILL: Yes. Judge Stark, this is Lawrence Daniel O'Neill for the Flynn plaintiffs, the appellants. And Frederick Rosner is here also for the appellants.

THE COURT: Okay.

MR. ROSNER: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. DURRER: Your Honor, Van Durrer from Skadden Arps Slate Meagher & Flom on behalf of the Foreign Representatives. With me on the phone as well is Annie Li from my office.

THE COURT: Okay. Is there anybody else?

Just you all; right?

MR. O'NEILL: Yes, that is correct.

THE COURT: I have my court reporter here with me. For the record, it is the case of In Re: Irish Bank Resolution Corporation Limited. It's our Civil Action No. 14-108-LPS. And I set this call basically to discuss the request for direct certification of the appeal to the Third

1 Circuit. We reviewed the pleadings and tried to follow what  
2 was happening or is happening in the Bankruptcy Court and  
3 found we needed some further assistance from all of you  
4 before we could make a decision, so that is why we're here.  
5 Given that it is the plaintiffs or appellants, I guess,  
6 request, let's start with them please. Go ahead.

7 MR. O'NEILL: Yes, Your Honor. Lawrence Daniel  
8 O'Neill for the appellants.

9 The standard for direct appeal that would apply  
10 or does apply in this case is that it is the absence of a  
11 controlling decision on these matters in the Third Circuit,  
12 and the fact that this is an issue of significant public  
13 importance and particularly within the framework of the  
14 application of Chapter 15 of the Bankruptcy Code.

15 The case in the Bankruptcy Court involves the  
16 seizure of assets of the largest or it was the largest  
17 bank in Ireland by the Irish government through special  
18 legislation. The bank had, prior to its termination, it was  
19 a solvent institution. And I am only dealing with the facts  
20 for which there is no contention here. It was a solvent  
21 institution. It had, prior to that point, three operating  
22 branches in the United States: in Chicago, Boston, and New  
23 York. It had had several hundred, if not more, U.S. citizen  
24 customers. It made loans and had done significant business  
25 in the United States. Most of those assets were sold a

1 couple of years ago to various U.S. parties. But it still  
2 retains sums significant to the tune of just under \$1  
3 billion in U.S. assets.

4 The decision in the Bankruptcy Court  
5 unfortunately has no opinion attached to it, so the nature  
6 of the facts that were accepted by the Court are difficult  
7 to ascertain.

8 THE COURT: Let me stop you there because that  
9 was part of my concern.

10 MR. O'NEILL: Yes.

11 THE COURT: First off, I wanted to confirm,  
12 there is still no opinion from Judge Sontchi; correct?

13 MR. O'NEILL: That is correct, Your Honor.  
14 There is still no opinion.

15 THE COURT: Have you heard anything further from  
16 him as to whether -- I think the order was unclear whether  
17 an opinion may or may not follow. Is there anything further  
18 on that from your perspective?

19 MR. O'NEILL: No, Your Honor. There is a  
20 notation in hand at the bottom of the first page of the  
21 ruling that says that an opinion may follow, but one has not  
22 followed. I presume at this point that one perhaps will not  
23 follow.

24 THE COURT: So given that, and given that we  
25 don't know, for instance, some of the factual determinations

1 that may have underlied the decision, doesn't that affect  
2 the analysis as to whether this is suitable for an immediate  
3 appeal to the Circuit Court?

4 MR. O'NEILL: Your Honor, I don't believe so in  
5 the sense that if we accept the evidence as presented to the  
6 Court by the Foreign Representatives as being accepted by  
7 the Court in granting the order, and that evidence is in the  
8 order and is fairly straightforward. So if we leave out the  
9 contentious bits, the part we don't agree with, I think  
10 there is still sufficient evidence, sufficient issues of law  
11 to justify a direct appeal.

12 Specifically, the dissolution of the bank and  
13 the transfer of its assets to the Irish government,  
14 everybody agrees, is a sui generis act. The IBRC Act, as  
15 passed by the Irish legislature in February of 2013, applies  
16 only to IBRC. It applies to no other institution or body  
17 in Ireland. That it does not set up any other regime of  
18 bankruptcy or liquidation that applies to any other party.

19 The Act, and it's in the evidence presented in  
20 the hearings, abrogates and makes inapplicable the majority  
21 of the Irish bankruptcy law as it relates to normal Irish  
22 bankruptcy and replaces it with law made, rulings made by  
23 the Minister of Finance himself with very limited, we would  
24 argue none but that is a disputed fact, with very limited  
25 review possible by Irish courts of those decisions.

1           The Minister of Finance oversees the  
2     liquidation. He makes rulings pursuant to that liquidation.  
3     Those rulings are sometimes published and sometimes not.  
4     And they are binding on the Liquidators. Thus, he can  
5     instruct the Liquidators in any way he chooses.

6           The Minister has created security over the assets  
7     of the bank within a time frame which would ordinarily in  
8     Ireland be grounds for a challenge of a fraudulent transfer.  
9     That challenge is precluded by provisions of the Act which  
10    also gives the Minister the right to create new securities  
11    over assets of the bank so long as they are in favor of  
12    the Irish government and precludes any challenge to those  
13    securities.

14          The bank, Irish Bank in its heyday was not only  
15    the largest bank in Ireland but it operated three branches  
16    in three U.S. cities, New York, Boston, and Chicago, under  
17    the approval and the license of the U.S. Federal Reserve.  
18    They made loans. They conducted commercial banking activities,  
19    although not High Street Banking activities, up until the time  
20    the bank was terminated in February.

21          The bank clearly, it was admitted in the  
22    case, overcharged its U.S. customers. The degree of that  
23    overcharging and the nature of that overcharging was  
24    disputed but the fact that it did overcharge its U.S.  
25    customers was admitted. And that overcharging resulted in

1 a loss, again, a disputed number, but a significant loss  
2 nonetheless to its U.S. customers.

3 The bank was not insolvent at the time that it  
4 was, its assets were transferred to the Irish government.  
5 And the proceeding in hand is not one of adjustment of debt  
6 which implies somehow the correction of or the solution of  
7 a problem so as to allow an entity to continue in business  
8 in Chapter 11 in the United States or an Examinership in  
9 Ireland. It is, and the evidence is quite clear from the  
10 legislative history of the IPRC Act, solely for the purpose  
11 of transferring the assets of the bank to the Irish  
12 government for the benefit of the Irish taxpayers.

13 It is our strongly held belief that that set of  
14 facts, which I don't believe are disputed in the evidence,  
15 are insufficient for recognition of a Chapter 15 -- for a  
16 Chapter 15 recognition, and it is our belief that accepting  
17 a Chapter 15 recognition under those conditions with that  
18 evidence, leaving out the disputed evidence, is tantamount  
19 to a rubber stamp carte blanche, we will recognize any  
20 seizure of any assets of any entity under legislation passed  
21 by any government so long as it is couched in the terms of a  
22 bankruptcy or liquidation regardless of the nature, the real  
23 nature or the true nature of the action that is taken.

24 That has not been the standard set so far in any  
25 cases in this Circuit, and is certainly not the standard set

1     *In Re: Betcorp* which it would seem to be the universal  
2     standard applied across a broad range of cases, including  
3     cited favorably in the *ABC Learning Centres* case in the  
4     Third Circuit.

5             I think the fact if this stands, it implies any  
6     Chapter 15 filing, regardless of the deficiencies of the  
7     foreign proceeding, any bank winding up for the benefit of the  
8     governments that have bailed it out, for example, any seizure  
9     of corporate assets by any government pursuant to legislation  
10    that has the color and the flavor of a bankruptcy regardless  
11    of this real intent will be recognized by the Bankruptcy  
12    Courts as a valid foreign proceeding is a matter of significant  
13    public importance to the U.S. investors, debtors, and to  
14    creditors of those institutions.

15            THE COURT: So if the case were to go forward on  
16    appeal to the Third Circuit, the factual basis for it would  
17    be what you just outlined? Is that essentially your view?

18            MR. O'NEILL: That is correct, Your Honor.

19            THE COURT: Now, I believe the Bankruptcy Code  
20    permits the Bankruptcy Court to revisit the finding of a  
21    related foreign main proceeding at any time; is that correct?  
22    And, if so, is that pertinent to the issue I have to decide?

23            MR. O'NEILL: I think that the Court, Your Honor  
24    can reconsider under a motion for a reconsideration, but I  
25    don't believe the Court can reopen the matter once it has



1 recognized a foreign proceeding as a foreign main proceeding  
2 absent some evidence of fraud or misrepresentation that  
3 emerges.

4 THE COURT: And help me understand how a  
5 certification of your appeal would help materially advance  
6 the bankruptcy pending here as opposed to whatever impact  
7 on other litigation you may want to pursue.

8 MR. O'NEILL: On the bankruptcy pending here,  
9 the IBRC liquidation will be completed in a very short  
10 period of time. The actual timing is unknown, but rumors  
11 and the statements made to the Irish Parliament by the  
12 minister and rumors around the halls of the high court in  
13 Dublin imply that the court will be fully liquidated, IBRC  
14 will be fully liquidated before the end of this year.

15 The final liquidation of IBRC, of course, will  
16 significantly harm the creditors of the bank who have been  
17 harmed already in this case. And so that in terms of the  
18 clarity as to the appropriateness of recognizing a foreign  
19 seizure of assets as a bankruptcy, it is important that that  
20 be resolved quickly.

21 More importantly, though, I think as to the  
22 application of Chapter 15, which is a relatively new  
23 statute, and particularly the application in this Circuit  
24 which is of exceptional importance nationwide because of  
25 Delaware's prominence in the corporate area, that there

1 needs to be clear clarification as to the actual standards  
2 that would be applied in the Third Circuit or should be  
3 applied in the Third Circuit to the approval, granting  
4 recognition of a foreign proceeding in Delaware.

5 Moreover, any lapse, any significant lapse of  
6 time in the legal process in this case will render any  
7 meaningful review of these matters moot because IBRC will  
8 have ceased to exist. The assets will have transferred to  
9 the Irish government, in this case to NAMA, and the matter  
10 will be moot to undertake before the courts.

11 THE COURT: Thank you. Let me hear from the  
12 appellee, please.

13 MR. DURRER: Good afternoon, Your Honor. This  
14 is Van Durrer of Skadden Arps Slate Meagher & Flom for the  
15 Foreign Representatives.

16 Just to respond to Your Honor's initial  
17 question. Yes, I do think that the lack of a detailed  
18 opinion impacts your ruling today.

19 First of all, the local rules provide that to  
20 the extent that Judge Sontchi would issue an opinion within  
21 seven days or so, it would become part of the record. Judge  
22 Sontchi didn't do that. And now being before him every few  
23 weeks in this matter, there is nothing to indicate that he  
24 intends to turn back to this unless instructed to do so  
25 to provide more detailed findings than what he put on the

1 record back on December 18 and what he memorialized in the  
2 order itself.

3 So in light of that, I think that if the Third  
4 Circuit were to consider what the statute is designed for,  
5 mainly, controlling issues of law, it should be clear to  
6 the Third Circuit what those controlling issues of law were  
7 and that the facts upon which the determinations were made.  
8 Candidly, it's not very clear.

9 We have, both parties prepared detailed findings  
10 of fact and conclusions of law at the time back in November  
11 when the trial in this matter concluded. And it was our  
12 hope that Judge Sontchi would have had the opportunity to  
13 adopt or refuse to adopt some or all of those. So I think  
14 that it is a bit of a challenge. And,

15 Again, candidly, Your Honor, as a trial judge  
16 for your day job, if I could say that with tongue in cheek,  
17 might be better equipped for sure than the Third Circuit.  
18 They're looking at various drafts of proposed findings of  
19 fact and conclusions of law cold. I would like to have the  
20 opportunity for Your Honor's guidance on how to interpret  
21 those based on your more day-to-day experience with trials  
22 and the trial court experience.

23 Going to the second question you posed, Your  
24 Honor: Does Judge Sontchi have the opportunity to revisit  
25 recognition at any point? There is sort of at least two

1 ways in which that can happen. Section 1517(d), like David,  
2 of the Bankruptcy Code provides that the provisions of the  
3 subchapter do not prevent modification or termination of  
4 recognition if it is shown that the grounds for granting it  
5 were fully or partially lacking or if ceased to exist. When  
6 considering such action, the Court should give due weight to  
7 possible prejudice to the party that relied upon the order  
8 granting that recognition. So that is baked right into the  
9 statute.

10 In addition, under Section 1522, there is a  
11 provision for protection of creditors and other interested  
12 parties where a party's interest can apply for relief or  
13 the modification of relief following recognition in order  
14 to protect our interests.

15 This has actually been pursued in this case.  
16 One of our borrowers sought to modify relief to protect what  
17 they perceived as confidential information related to their  
18 business because we were in the process of marketing their  
19 loans for sale and we believed that competitors might have  
20 an unfair advantage in viewing their commercial information,  
21 so we worked out an agreement. We actually settled that  
22 matter. That is an instance where people on an individual  
23 basis are coming back to court and asking for assistance  
24 with respect to what they perceive as negative impacts of  
25 recognition on their particular instances.

1           That leads me to a related issue which is  
2 another sort of change in circumstances from when this  
3 matter was first brought to Your Honor's attention. And  
4 that is that the basis upon which the appellants asked for  
5 this expedited relief in part is because there was a New  
6 York action that they had brought that had been stayed by  
7 virtue of the Section 362 automatic stay that applies upon  
8 recognition in this matter, and they argued that they were  
9 prejudiced because that action was forestalled and could  
10 not proceed until this appeal was resolved.

11           Well, that is not the case anymore. They  
12 presented an amended complaint to Judge Sontchi which Judge  
13 Sontchi permitted them to proceed with, and they have in  
14 fact proceeded in New York. So the original alleged prejudice  
15 that existed because this recognition of this Chapter 15  
16 proceeding is stalling that action, it is just no longer the  
17 case, and it might helpful for Your Honor to know that.

18           With respect to the core of our argument, I'm  
19 not going to spend a lot of time on this unless Your Honor  
20 has specific questions, but there are factual issues. We  
21 highlighted in our papers, for example, that the appellants  
22 cited nothing in their proposed findings of fact or conclusions  
23 of law as far as factual matter to the effect that Irish  
24 Bank Resolution Corp. had branches or agencies operating  
25 within the United States at the time of the commencement

1 of the Chapter 15 petition. So contrary to the settlement  
2 comments that Mr. O'Neill made, those are disputed issues of  
3 fact.

4 We did present evidence on that, and I think  
5 that it was implicit in Judge Sontchi's findings, limited  
6 though they were, that he determined that we were in fact  
7 eligible for Chapter 15 relief by virtue of not having a  
8 branch or agency within the United States for two reasons.

9 Reason No. 1 -- and this was uncontroverted at  
10 the trial below -- none of those, whatever you want to call  
11 them, branches, agencies or representative offices, and that  
12 distinction is important by the way, but whatever you call  
13 them, none of them were operating at the end of August when  
14 the Chapter 15 was commenced, and the case law is clear that  
15 that is the date you look at. Were you eligible at the time  
16 you filed? And obviously we hadn't opened any since then.  
17 We were prohibited under Irish law from operating as a bank.  
18 We could only wind down our assets.

19 Second, these terms have meaning within the  
20 U.S. statutes. We cited these in our papers, but a branch  
21 or agency has meaning under federal banking laws in the U.S.  
22 Specifically, a branch or agency must be able to originate  
23 a loan. A representative office by distinction cannot  
24 originate a loan, it can only interact with customers. In  
25 this instance, it was clear from the testimony below that

1 none of the offices of IBRC that were operating in the United  
2 States in any bank could originate loans. Those decisions  
3 had to go back to Dublin or an office in the U.K. for final  
4 decision. They could not consummate that transaction all by  
5 themselves. As I said, again, all those offices were closed  
6 in any event well before August when the Chapter 15 petition  
7 was commenced.

8           Next. Even setting aside whether there are  
9 disputed issues of fact, controlling law, you know, we have  
10 *ABC Learning Centres*, which is a very lengthy Third Circuit  
11 opinion. It describes the intent and purpose behind Chapter  
12 15 and the trial model law, it highlights how collective and  
13 universalistic approaches are preferred to individualistic  
14 approaches. We detailed in our papers how these parties,  
15 the Flynns, are focused on their action, their ability to  
16 recover. They prefer the individualistic approach as  
17 opposed to the collective approach in collective insolvency  
18 proceedings like this.

19           With respect to the insolvency. Specifically,  
20 the model law and the Third Circuit case law does not  
21 require that individual creditors get a distribution, for  
22 example. And that was specifically raised and rejected in  
23 *ABC Learning Centres*. It merely requires that the statute  
24 be set up that way.

25           By analogy, the statute likewise does not

1     require that the company, in this case IBRC, be insolvent.  
2     And that is disputed. I think the former directors of IBRC  
3     take the position that IBRC was insolvent when it was taken  
4     over and put through the Irish Bank Resolution Act in  
5     February of 2013, and the Special Liquidators offered  
6     testimony at the hearing in recognition that they dispute  
7     that. That they have a different opinion with respect to  
8     that, and there has not been a final adjudication on that.

9             However, the Chapter 15 statute does not require  
10     insolvency. It merely requires that the entity seeking  
11     Chapter 15 relief be the subject of a law relating to  
12     insolvency or the adjustment of debt; and the Flynns cannot  
13     dispute that the IBRC act, whatever else it does, involves  
14     the adjustment of debts. So regardless of whether this  
15     entity is solvent or not, and that is for another day, in  
16     another jurisdiction, that would not render IBRC ineligible  
17     for Chapter 15 relief.

18             Then the last couple of things that we talked  
19     about in our papers, is this a matter of public importance?  
20     Not really. This is such a unique statute, it's not going  
21     to come up again, and the only people that are still arguing  
22     about this right are the Flynns and IBRC.

23             I want to focus here on something, too, which my  
24     colleagues take a little bit of liberty with. The posture  
25     that they tee this up in, Your Honor, is that this is a big



1 bad foreign company beating up on a small, helpless United  
2 States citizen.

3 That is simply not accurate. What the evidence  
4 at the trial below was this is an Irish Bank. There is a  
5 clear involvement, I'm not going to dispute it, with the  
6 Irish government in Irish Bank, and there is a security  
7 interest held by a third party that is also related to the  
8 Irish government. However, the Flynns are Irish citizens,  
9 and they happen to live in Florida. God bless them. They  
10 have a Green Card. God bless them. But they have recourse.  
11 This is not their only avenue of recourse. In fact, there  
12 are numerous proceedings, multiple proceedings going on in  
13 the Irish courts involving the Flynns and IBRC. So they're  
14 not shy about exercising their rights. So it's just a little  
15 unfair to call this a grand notion of public importance  
16 between a big foreign government and a small United States  
17 citizen when that is just simply not the case.

18 And then the last point, Your Honor, that we had  
19 raised is, and I think Your Honor addressed this, too: What  
20 impact does this have on the bankruptcy case?

21 Well, not only is the Flynns' action proceeding,  
22 but the standard is, will expediting the appeal by taking it  
23 straight to the Third Circuit expedite our bankruptcy case?  
24 And, frankly, the matter is that it won't.

25 This appeal is not, other than taking my time

1 and causing me to bill fees to my client, which I am  
2 thrilled about, it's not distracting at all from the  
3 prosecution of the underlying case. We've had loan sales  
4 since then, we have conducted other business since then, and  
5 at the upcoming hearing in May before Judge Sontchi, we will  
6 continue to ask the Court to approve further loan sales and  
7 other asset distribution. So we continue to go about our  
8 business. This appeal really does not impact that in any  
9 regard.

10 So unless there are further questions, Your  
11 Honor, that ends our presentation.

12 THE COURT: All right. Mr. Durrer, so then what  
13 would you have me do? I would deny the certification and  
14 then enter a briefing schedule on the appeal here? Is that  
15 what you would propose?

16 MR. DURRER: That would be acceptable, Your  
17 Honor. And then I think that what we would endeavor to  
18 do is to walk you through the factual record that we believe  
19 supports what Judge Sontchi did, and then Your Honor would  
20 have an opportunity to narrow the field of potential legal  
21 issues. And in my view, Your Honor, I think there aren't  
22 any, but at a minimum, you would definitely focus what would  
23 be a further approach by the Third Circuit on any of these  
24 issues that happened to remain.

25 THE COURT: Alternatively, Mr. Durrer, where you

1 started maybe was a suggestion I could formally I suppose  
2 send it back to Judge Sontchi and ask him either to write  
3 something or tell us if he is going to? Was that -- is that  
4 another course of action available here?

5 MR. DURRER: That is definitely another course  
6 of action, Your Honor. And in light of the comments I made  
7 about the fact that you're much better equipped to develop a  
8 record than is the Third Circuit, certainly Judge Sontchi  
9 is even more better equipped. And I think that the tension,  
10 if you look back at the transcript from the December 18th  
11 hearing, you will see that this statute, and it's unusual  
12 in this regard, specifically says that a party requesting  
13 recognition of a Chapter 15 proceeding is entitled to an  
14 order at the earliest possible time.

15 And after Thanksgiving and the first couple of  
16 weeks of December, approaching fast the end of your holiday,  
17 I think that Judge Sontchi realized that he was treading a  
18 little bit on that statute by not issuing a ruling. His  
19 preference clearly that he expressed would have been to  
20 write more, and his footnote at the bottom of the December  
21 18th order expressly says it as well.

22 So I think that is definitely an avenue available  
23 to Your Honor, and it actually might be very efficient in  
24 terms of putting the meat and potatoes of this matter in front  
25 of an appellate court, whether it is you or some other court.

1           THE COURT: Okay. Thank you. Mr. O'Neill, I  
2 will give you a chance to respond.

3           MR. O'NEILL: Your Honor, I will be very brief.

4           I think Mr. Durrer has made my case on the  
5 importance of this matter when he said this is a one time  
6 action, this case applies only to IBRC, and said it will not  
7 be used again. The fact is this certainly will be used  
8 again. This is basically a nationalization of the assets of  
9 a foreign bank which has significant U.S. presence.

10           It's a bit insulting for Mr. Durrer to suddenly  
11 decide that my clients are not U.S. citizens because they  
12 are merely permanent residents with Green Cards and not U.S.  
13 Passport holders. I think a lot of Green Card holders  
14 would be shocked to find that Mr. Durrer thinks they are not  
15 in fact U.S. citizens, and U.S. citizens should rely upon  
16 foreign courts as their only recourse in an action where  
17 they have been defrauded by a foreign bank.

18           I can say that this issue will come up again.  
19 It will come up frequently again. It may come up very soon  
20 where you have various foreign governments, for their own  
21 purposes, whatever they may be, passing legislation to seize  
22 the assets of foreign corporations which have U.S. creditors,  
23 investors and parties in them, and using the precedence  
24 set in this case, those parties would apply to have that  
25 confiscation of the assets, that seizure of the assets

1 recognized as a foreign proceeding before the Bankruptcy  
2 Courts of the United States. That is the real issue here  
3 that needs to be decided.

4 If a foreign government passes legislation  
5 unique, as Mr. Durrer admits, that applies only to an entity  
6 for the purpose of "liquidating" that entity for the benefit  
7 of the foreign government exclusively, is that or should  
8 that be recognized as a proceeding worthy of the protection  
9 of the U.S. Bankruptcy Code?

10 THE COURT: It's correct, isn't it, that your  
11 New York action is going forward at this time, Mr. O'Neill?

12 MR. O'NEILL: Yes, except the New York action  
13 is barred against IBRC, the Special Liquidators and their  
14 advisors, as is discovery against IBRC which is the heir  
15 to Anglo-Irish Bank which is the party that engaged in the  
16 fraudulent behavior to begin with, which is an impediment  
17 to that action to the extent that we are not able to obtain  
18 the bank records, the account records, and to subpoena  
19 those records and to engage in discovery against the Special  
20 Liquidators that testified in the Chapter 15 proceeding that  
21 they have investigated thoroughly the overcharging issue.

22 I would love dearly to see the results of their  
23 investigation, but we are barred from obtaining those pursuant  
24 to the stay that has been entered against both us taking  
25 action against the Special Liquidators, their advisors, who

1     were in some cases intimately with the bank throughout this  
2     period of fraudulent behavior, and against IBRC, the successor  
3     institution itself. So that is an impediment, but, yes,  
4     despite the efforts of the Special Liquidators to prevent  
5     these cases going forward, Judge Sontchi has allowed us to  
6     proceed against all but the bank, the Special Liquidators  
7     and their advisors.

8             THE COURT: All right. And Mr. O'Neill, what  
9     about, if I'm not inclined to certify to the Third Circuit,  
10    what would you have me do in the alternative?

11            MR. O'NEILL: Well, actually, your suggestion of  
12    seeking an opinion from Judge Sontchi is actually quite a  
13    good one. I was quite disappointed not to get one because I  
14    think that that does impede an appeal of this matter, not to  
15    understand what he accepted and what he did not, or in the  
16    alternative, we would pursue the appeal through the District  
17    Court here in Delaware.

18            THE COURT: All right. Well, I'm going to give  
19    this a little bit more thought. I appreciate the input from  
20    both of you. I should say I'm considering truly everything  
21    from certifying to not certifying to sending it back to  
22    Judge Sontchi. In saying that, I mean I have concerns with  
23    each course of action which is one of the many reasons I  
24    have to give it some more thought.

25            I don't know that it's in anyone's interest if I

1     were to certify it and then the Third Circuit takes a look  
2     at it and feels they can't really accept the certification  
3     or can't do much with it given the status of the case. I'm  
4     concerned with that happening to me as well, plus all the  
5     other things I have in front of me.

6             But I'm sure with Judge Sontchi, I'm sure like  
7     me, he is very busy as well, and I have plenty of matters  
8     where the opinion takes a lot longer to get out than I ever  
9     would have hoped, and for all know that is the situation  
10    here. Obviously, I really don't know.

11            So I want to give this a little more thought. I  
12    don't intend to keep it hanging too long, but I'm not prepared  
13    to make a decision just now.

14            Is there anything further before we break,  
15    Mr. O'Neill?

16            MR. O'NEILL: Yes. Your Honor, actually, in light  
17    of your comments just now actually, and I've been taking all  
18    of that in carefully, perhaps a more appropriate course of  
19    action would be to require Judge Sontchi to at least give at  
20    least an opinion as to why he granted recognition given the  
21    facts in the case. And then we could revisit certification  
22    on that basis to see if there is sufficiency to warrant  
23    certification at that point.

24            THE COURT: Certainly, that is part of what I  
25    think I'm considering, so I appreciate understanding your

1 position.

2 Mr. Durrer, is there anything further?

3 MR. DURRER: No, Your Honor. Thank you.

4 THE COURT: Okay. Thank you all for your time.

5 Good-bye.

6 MR. O'NEILL: Thank you, Your Honor.

7 MR. DURRER: Thank you.

8 (Telephone conference ends at 5:03 p.m.)

9

10 I hereby certify the foregoing is a true and accurate  
11 transcript from my stenographic notes in the proceeding.

12

13 /s/ Brian P. Gaffigan  
14 Official Court Reporter  
15 U.S. District Court  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25